

Service Date: January 7, 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	UTILITY DIVISION
of US West Communications for)	
Forbearance of Rate Regulation)	DOCKET NO. 90.10.74
Re: Pacific Hide and Fur Depot)	
_____)	ORDER NO. 5514a

FINAL ORDER

FINDINGS OF FACT

General

On October 26, 1990 US West Communications (USWC) filed with the Montana Public Service Commission (Commission or PSC) an application to forbear rate regulation for the provision of intraLATA Message Telecommunications Service (MTS), including collect billing and four call types, Outward WATS, and WATS 800 service to Pacific Hide and Fur Depot (PHF). USWC identified PHF's location in Great Falls, MT. and nine branch offices in the following cities as the locations for which it seeks forbearance:

Billings (2) Butte Glasgow Havre
Lewistown Miles City Missoula Miles City

USWC filed its application pursuant to Section 69-3-808, MCA.

On November 2, 1990, the Commission deferred action on this filing for an additional five days, as provided in Section 69-3-808 (3), MCA. Order No. 5514.

On November 8, 1990, at a duly noticed work session, the Commission GRANTED USWC's forbearance application for the usage portions only of MTS, Outward WATS, and WATS 800 service. The Commission's rationale for limiting USWC forbearance to the usage portions of MTS, Outward WATS and WATS 800 service is provided below, following a summary statement of the Commission's rationale for approving USWC's application in this case, and its expectations regarding USWC's pricing practices with respect to costs.

Commission Decision: Rationale

The Commission bases its decision in this case upon the following: 1) the contents of USWC's application, 2) a letter attached to and referenced in USWC's application addressed to USWC from PHF requesting a proposal from USWC for direct dialed long-distance service and 800 WATS, 3) PHF's current use of 800 ReadyLine, and 4) the existence of tariffs and price lists on file with the Commission. PHF's letter stated that bids were being sought from AT&T, U S Sprint and American Sharecom. The Commission finds the combination of these items to satisfy the intent of the forbearance statute. The legal rationale for the Commission's decision in this docket is provided in the Conclusions of Law section of this order.

Expected Cost/Price Relationship

Although the forbearance statute (Section 69-3-808, MCA) may not permit analysis of the economic merits of USWC's discounted sales prices in considering the forbearance application itself, the Commission intends to analyze the merits of such discount prices in later dockets. There is absolutely no evidence in the instant or past forbearance applications that prices resulting from a negotiated contract or contracts for the services listed herein or in past applications will cover relevant economic costs. Further, no economic costs studies have been accepted by this Commission for USWC's toll services (see Order Nos. 5354d and 5354e, Docket No. 88.1.2). Therefore, USWC is hereby put on notice that to the extent any such sales prices resulting from a negotiated contract for the services listed herein fall below the Commission's estimate of relevant marginal costs, the resulting shortfall shall be borne by USWC shareholders.

Limitation to the Usage Portions of MTS, Outward WATS and Wats 800 Service

The Commission bases its decision to limit forbearance in this case to the usage portions only of MTS, Outward WATS, and WATS 800 service on the following two arguments: 1) the local

exchange carrier (LEC) appears to be the only provider of local exchange access lines for similar competitive services and 2) the Commission's findings in Docket No. 88.1.2 regarding the stipulation between USWC and AT&T. Both of these findings are based on the non-competitive nature of local exchange access lines.

LEC as The Sole Access Provider In its application, USWC broadly requests forbearance for MTS, Outward WATS and WATS 800 service. USWC listed a brief description and references sections A6 and A7 of its Montana Exchange and Network Services Tariff for each service. In USWC's tariff Outward WATS and WATS 800 services are priced according to the provision of a dedicated access line (in some cases) and by hours of use. 800 ServiceLine, also listed in section A7, is the exception: 800 ServiceLine is provided via the customer's existing exchange access line or trunk. See Sections A7.1.A (2) and (3), USWC's Montana Exchange and Network Services Tariff. Other interexchange carriers, such as AT&T, also provide Outward WATS and WATS 800 services similar to USWC's service, however, such services require an access line provided, in some instances, by the LEC such as USWC. For example, AT&T provides intrastate Megacom 800 service in Montana as an add on to AT&T's interstate 800 Megacom service. Access for this service may be obtained from either AT&T or another source. See AT&T's FCC Tariff No. 2, Section 6.3.1, effective May 4, 1990, as referenced in AT&T's Montana Telecommunications Services Tariff, Section 14, p. 2. However, the Commission questions whether PHF would have sufficient volumes to justify the purchase of non-LEC provided access facilities for any of its locations listed above. Therefore, there would appear to be no viable competitive option for access facilities for PHF other than the LEC (USWC).

Docket No. 88.1.2 In Docket No. 88.1.2, the Commission granted USWC price detariffing for the non-access portions of Centron Service as defined in paragraph 9 of the stipulation between AT&T and USWC. The Commission held that Centron station lines were to remain fully tariffed (FOF 282, Order No. 5354d). The AT&T/USWC stipulation in Docket No. 88.1.2 states:

The parties agree that USWC's provision of Centron

Network Access Registers, Centron Station Lines and the Common Equipment (which includes DID, TouchTone and station number assignment) shall remain tariffed. Detariffing of the competitive elements of Centron Service, including all other features and enhancements of Centron Service, should be granted. USWC Exh. No. 26, Docket No. 88.1.2, emphasis added.

By interpreting this portion of the USWC/AT&T stipulation to mean that Centron Station Lines are not considered by the parties as competitive, there is a logical basis to extend the same logic to the local access lines used to provide MTS, Outward WATS, and WATS 800 service, in this case.

Therefore, the Commission concludes that until it finds that the access portions of MTS, Outward WATS, and WATS 800 services are competitive, the Commission maintains that USWC may only be granted forbearance for the usage portions of these services, providing it otherwise satisfies the requirements of Section 69-3-808, MCA and ARM 38.5.2715.

CONCLUSIONS OF LAW

1. USWC provides regulated telecommunications services within the state of Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission, Sections 69-3-101 and 69-3-803(3), MCA.

2. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA.

3. USWC's application contained the information required by Section 69-3-808, MCA and ARM 38.5.2715.

4. The Forbearance statute clearly requires the existence of an alternative competitive offer as a necessary condition to granting an application. Section 69-3-808, MCA, ARM 38.5.2715 and PSC Order No. 5491, Docket 90.8.45. The Commission has previously held that a competitor's actual provision of service to a customer satisfies this "offer" requirement. PSC Order No. 5479, Docket No. 90.6.34. In this case, USWC verified application states that "The customer is currently using AT&T's 800 Readyline service to meet all of their 800 needs - IntraLATA,

InterLATA and Interstate." With respect to 800 service, this fact satisfies the "offer" requirement based upon PSC Order No. 5479, Docket No. 90.6.34.

5. The USWC application fails to state that the customer is currently using AT&T for its intraLATA WATS and MTS toll services. There is absolutely no evidence of this fact before the Commission herein. Thus, the reasoning of Order No. 5479 alone is insufficient to grant forbearance for these services. USWC argues that the "offer" requirement should be considered satisfied due to AT&T's tariffs and U.S. Sprint's "price lists" on file with the Commission. The Commission first notes that U.S. Sprint's "price lists" have not been accepted or approved by the Commission; but are a subject of consideration in PSC Docket No. 88.11.49. But, both AT&T's tariffs and U.S. Sprint's "price lists" do contain provisions for intraLATA WATS and MTS services. The Commission also notes that the application incorporates a letter from the customer requesting a written bid from U.S. West "on long distance services for both direct dialed calls and 800 WATS calls..." and stating that requests for proposals are being sent to AT&T, U.S. Sprint, and American Sharecom. The Commission holds that all of the above factors - the customer letter, AT&T's tariffs, U.S. Sprint's "price lists," and the customer's current use of 800 Readyline - considered in combination establish sufficient evidence of competition to satisfy the intent of the forbearance statute. This decision is expressly limited to the particular circumstances of this case and the presence of all the factors described above.

ORDER

1. USWC is GRANTED FORBEARANCE of rate regulation with respect to the provision of the usage portions only of intraLATA Message Telecommunications Service (MTS), including collect billing and four call types, OutWATS, and WATS 800 service to Pacific Hide and Fur Depot (PHF).

DONE AND DATED this 3rd day of January, 1991, by a 5 to 0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

WALLACE W. "WALLY" MERCER, Commissioner

JOHN B. DRISCOLL, Commissioner

REX MANUEL, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.